# VIEWPOINT:
# Are You CARD Act-Ready?

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*by Deborah S. Thoren-Peden and Amy Pierce*

**Deborah S. Thoren-Peden**
Consumer & Retail
+1.213.488.7320
deborah.thorenpeden@pillsburylaw.com

Deborah Thoren-Peden advises on electronic payments, Internet banking and issues concerning gift and prepaid cards.

**Amy Pierce**
Litigation
+1.916.329.4765
amy.pierce@pillsburylaw.com

Amy Pierce advises clients on compliance matters related to prepaid and gift cards and has assisted clients in defending against alleged violations of gift card laws.

Among the many financial reforms enacted in the past year is the federal Credit Card Accountability, Responsibility and Disclosure Act, which includes provisions that apply to gift cards. These provisions, taking effect Aug. 22, will have a significant impact on banks because the act covers a broad range of products and services.

In general, these provisions, as implemented in Regulation E, cover all prepaid "cards, codes and other devices" that are issued to a consumer on a prepaid basis primarily for personal, family or household purposes.

The new law covers most closed-loop and open-loop gift cards, mall cards, other stored-value cards, prepaid products and services, and even broadband and telecom cards, and virtual currency. It is not limited to products issued in card form. It broadly covers any method of providing the prepaid product, including plastic cards, radio, newspaper, mobile phone, fobs, e-mails, codes, bar codes and account numbers.

Moreover, almost all loyalty, award and promotional offers are potentially covered by the CARD Act, unless specific disclosures are made, some of which must be on the face of the offer.

Essentially, most financial institutions' promotional offers, whether tied to prepaid cards or not, appear to be subject to the CARD Act.

In addition, state laws that are more protective than the CARD Act are not preempted. So, applicable state laws that further limit expiration dates or fees or require additional disclosures continue to be effective.

## What does this mean for bank executives and compliance officers?

All prepaid cards sold and promotions offered after Aug. 22 must meet the new legal requirements, which restrict fees, prohibit expiration in less than five years and impose strict disclosure requirements unless one of the narrowly construed exclusions applies.

Most types of service, maintenance, transactional (even ATM and foreign transaction fees), account balance inquiry, dormancy and similar fees are prohibited unless the card has been inactive for 12 months and these fees have been clearly and conspicuously disclosed on the card and given prior to purchase.

Even when such a fee may be imposed, only one fee per calendar month is permitted and only if the card remains inactive - any activity will reset the 12-month inactivity timeframe. Moreover, there can be

no aggregation of fees. Certain one-time fees are permitted, such as an initial purchase fee, but these must be clearly and conspicuously disclosed.

There is an exclusion for general-purpose reloadable cards that are not marketed or labeled as a "gift." To qualify for this exclusion, financial institutions may need to modify their advertising and marketing programs, develop and implement policies and procedures that prohibit advertising these products as a gift, and possibly amend agreements to ensure others in the supply chain do not advertise such products as a gift.

The exclusion for promotions, in general, requires specific statements on the front of the card or offer indicating that it is a "REWARD" or "PROMOTION" and the expiration date for the underlying card or offer; disclosure on or with the card or offer of any fees and conditions for imposition; a disclosure on the card or offer of a toll-free phone number and (if maintained) website to obtain fee information or a replacement card.

Even if your institution has finalized or is close to finalizing its compliance process, you should consider having your compliance or legal counsel double-check that revised disclosures, terms and conditions, related policies and procedures, and marketing programs meet all CARD Act requirements, and that all cards and promotions have been identified. You may also need to engage in additional training to try to ensure that all appropriate personnel (and, as applicable, outside vendors and marketing agencies) understand the new requirements.

Is your financial institution compliant-ready for the CARD Act?

Pillsbury Winthrop Shaw Pittman LLP | 1540 Broadway | New York, NY 10036 | 1.877.323.4171